

Chapter VI

The Baroda Cantonment.

The Residency and the Cantonment ~~xxxx~~ were two physical features of the Paramount Power in a Native State of India. The mere idea of their presence in ~~xxx~~ ^{or} near a State Capital was enough to dissuade those forces which might think of disturbing the internal peace and order, or rise against the Ruler or administration from launching on such activities.

They were results of History and perhaps were found essential for the general good at the time. But what the Native States come to object at a later period was that they had outlived their utility, ~~that~~ they were being utilised for such purposes, which were not intended at the time of their establishment.

Baroda Cantonment also had the similar story to tell. The fundamental question was of jurisdiction.

In the year 1802, a small piece of land about a mile distant from the Capital was given for the occupation of the subsidiary ^{stationed} Force ~~sanctioned~~ at Baroda. In 1822 *, at the instance of the Resident at Baroda, His Highness' Government granted a parwana (permit) empowering the Officer Commanding the Subsidiary troops in the Cantonment to try offences committed by the Sepoys (privates) and camp followers within Cantonment limits. Thus whatever authority was exercised in the Baroda Cantonment was by express consent of and delegation from His Highness' Government.

* H.P.O. Selection No. XXXII 'Jurisdiction over Baroda Cantonment'
Pp. 1-2.

In 1867 * on finding serious inconvenience and anomalies regarding the jurisdiction both civil and military over the Baroda Cantonment since it was established in the year 1802, when weak Anand rao had to call for the help of the British, the Resident reported the case for the instructions of the Government with his remarks and urged the necessity of the appointment of an officer invested with the Magisterial powers to dispose of civil and criminal suits within the Camp limits.

It was proposed to the Gaekwad that the same measures and arrangement should be adopted for the Military Camp at Baroda as was in force at Secunderabad % where the powers of the Magistrate were exercised, subordinate to the Resident. That it was explained to the Gaekwad that the course proposed (appointment of the Cantonment Magistrate) would affect the British subjects and it would in no way infringe his legitimate authority or interfere with his inherent rights over the land @; and that as the Camp was in his and not in the British Territory the Cantonment Magistrate in all respects be subject to the control of the Resident under the authority of the Government and that being convinced of these arguments, the Gaekwad gave his consent to the course proposed by the Bombay Government to the Government of India. During the controversy it was maintained by His Highness' Government that this consent was an unwilling one.£

*H.P.O. Selection No. XXXII 'Jurisdiction over Baroda Cantonment'
Pp. 38 and 36

%H.P.O. Selection No. XXXII 'Jurisdiction over Baroda Cantonment'
P. 50.

@ H.P.O. Selection No. XXXII 'Jurisdiction over Baroda Cantonment'
P. 199 . Para 41 of Lalji Parsotamrai's Memo.

£ H.P.O. File No. 341/61.

Any how, in May 1874* an important Ruling was given with regard to an inquiry put up by the Cantonment Magistrate who inquired whether a person (originally a resident of Bombay and who had resided in Baroda only for 4 months) accused of committing an offence in the Baroda territory and who had taken refuge in the Camp should be made over to the City Courts for trial without requiring a prima facie case for his surrender under Extraditory arrangements. The Magistrate was informed that such a person even if he were the Gaekward's own subject, could not be made over unless a prima facie case was furnished through the Resident.

For the first time in 1887 the Government of India took up a new position which was conveyed to the Baroda Government by the Resident Col. Barkeley in his demi official letter dated 8th February 1887%. It stated.

- 1) That the theory of delegation does not apply to such cases (as the jurisdiction exercised by British officers in the Baroda Cantonment), that General Watson apparently did not know that the matter was fully considered and authoritatively settled by Governor General-in-Council some years ago; and that the ruling ~~existing~~ of the Supreme Government is that full jurisdiction over all persons and things within a British Cantonment is necessarily acquired by the British Government as a consequence and in virtue of the occupation of the Cantonment by British troops;
- 2) that in accordance with the principle stated above, it has been the uniform practice of the Supreme Government to establish by its own authority and without reference (except as a matter of

* H.P.O. Selection XXXII P. 134.
% H.P.O. Selection Pp. 148-149-150.

courtesy) to the consent of the Native States, such Courts of law as have from time to time seemed necessary for the disposal of judicial business in British Cantonments, within these States, and, similarly to apply to the Cantonments such acts of the British Indian Legislature, as have, from time to time, been required by the wants of the communities in the Cantonments,

- 3) that as a matter of practice great inconvenience might be caused if two different jurisdictions, one British and the other Native, were to be exercised in Cantonment limits,
- 4) that while in some large and populous places like Secunderabad, the details have been for the most part, elaborated, in less important military stations like Baroda, the arrangements have been left to gradual adjustment, and
- 5) that the time has come for the working out the details, rather more for the Baroda Cantonment than a District Court or the Civil Court of original jurisdiction might be established and some of the acts most useful in ordinary practice might be formally applied."

His Highness' Government found itself unable to concur in the above arguments and asked for the relevant papers to make a representation to the Government of India. This was denied by the Residency office on the ground that it was not customary to forward copies of such letters." (Vide D.O. letter dated 14th April 1887)*

Again on 17th March 1888% i.e. a year after the Resident wrote

* H.P.O. Selection XXXII Pp. 151-152.

% H.P.O. Selection XXXII P. 153.

to the Minister in this regard, clarifying the position taken by the Government of India.

- "1. that it is desired on behalf of the Government of India to assume complete civil and criminal jurisdiction over the Baroda Cantonment,
2. that it is regarded that such assumption does not affect His Highness' territorial sovereign rights, in as much as the jurisdiction over the inhabitants of the cantonment would lapse to His Highness' Government should the British Garrison be withdrawn from its, and
3. that it is not the intention of the British Government to interfere with existing arrangements about land revenue, Abkari and so on."

and requested the Baroda Government to favour the Residency with their views on the subject.

Dewan Laxman Jagannath without losing much time on 31st August 1888* sent a lengthy reply to the new Resident Col. Sir Oliver B.C. St. John, Agent to the Governor General Baroda and requested him to forward it for the kind consideration of the British Government.

But before we proceed to see the contents and the line of approach as contained in the Dewan's letter, let us summarise the actual position that was available of the Baroda Cantonment.

"That two separate jurisdictions have come to be established in the Cantonment area Viz:

1. The Military jurisdiction of the Military Courts-Martial, over the Sepoys, servants and Camp followers of the
Subsidiary Force sanctioned in the Cantonment area, and

* H.P.O. Selection XXXII Pp. 155-181.

2. The jurisdiction of the Cantonment Magistrate, Civil and Criminal, over British subjects residing in the Camp, who are not subject to the military law. In connection with this criminal jurisdiction there exist ~~x~~ higher criminal powers which are exercised by the Agent to the Governor General."*

The Dewan's letter referred to this position and stated that for both these jurisdictions permissions were sought from ~~the~~ His Highness and the consent was given. He further made it clear that after giving away certain jurisdiction the residuary jurisdiction remained with His Highness' regular courts, and that this had been recognised and acted upon to this day.

"There is the uniform testimony of past records extending over 68 years to show that what-ever authority is exercised in the Baroda Cantonment by British officers is under express consent, formally obtained from His Highness the Gaekwad's Government, or in other words, it is delegated. The position taken up by Col. Berkeley is opposed to this conclusion." %

Now "it has to be considered whether compliance with the proposal that the British Government should assume also the residuary jurisdiction which is now exercised by Baroda Government is necessitated by the circumstances under which the Camp is now situated and whether the measure will be for the public good. These are the two Paramount considerations in reference to which the settlement of the question of jurisdiction should be arrived at.@

* H.P.O. Selection XXXII Pp. 167.

% H.P.P. Selection XXXII p. 168

Looking to the area of the Camp and area occupied by the Military its civil and Military population the reduced importance of the Bazaar and trade therein in bulk " would show that there is no necessity to interfere with the present arrangement which has been working so smoothly and satisfactorily to all parties concerned for so many years. Moreover, the difficulties in the administration of Baroda State might be caused while the benefits to the actual residents of the Camp would be almost inappreciable.*

Moreover "the evils of creating a foreign territory, a xterritory subject to different set of laws, so near the heart of the capital, would immensely outweigh the good if any, which it might be considered to secure." %

The Dewan after contending thus the position of British Government proceeded to place before the latter his own proposals, which may briefly be summarised here:-

@ " a) The British authorities in the Camp might exercise all criminal powers within the Court limits over British subjects.

His Highness' subjects committing offences within the Cantonment limits should be handed over to His Highness' regular Courts for trial, His Highness' Government similarly delivering to the Cantonment authorities, British subjects residing in the Camp, who may happen to commit offences within His Highness' territories.

* H.P.O. Selection XXXII Pp. 169.
 % " bx " p. 170
 @ " " pp.180-181.

- b) The Cantonment Magistrate might exercise within the Cantonment limits the powers of a Small Cause Court Judge.
- c) The residuary jurisdiction to continue with His Highness' Government.
- d) The execution against immovable property within the cantonment limits, of the decrees of the Cantonment Small Cause Court and those of the Baroda Courts, should be carried out by the Cantonment Small Cause Court Judge, as executive authority, the Baroda Courts moving him in cases where their decrees are concerned.
- e) The execution of the decrees of the Cantonment Small Cause Court, outside the ~~Court~~ ^{Cantonment} limits to be carried out by the Baroda Courts, on the application of the parties concerned.
- f) The service of processes, summonses etc. of the Baroda Cantonment to be made within the Cantonment limits by the ~~Court~~ Cantonment Magistrate and vice versa. The processes etc. to be sent direct or through the Agent to the Governor General.
- g) The management and so on, or at any rate, the sale of the opium and abkari farms, to rest with His Highness' Government the latter paying to the British Government the due share of the revenue, provided existing arrangements in other matters also are maintained, all criminal offences in connection therewith within the Cantonment limits being being disposed of according to the arrangements in force regarding other offences.
- h) His Highness the Gaekwad's stamps to be used in the Cantonment instead of the British stamps as at present.

- 1) The administration of Registration to be made over to His Highness' Government.
- j) Municipal jurisdiction to be exercised as at present, but His Highness the Gaekwad's property within the Camp to be exempted from all municipal taxed. " *

From the above detailed enumeration of the proposals put forward by the Dewan we can see the anxiety of the State to settle this question in all its details, for once and all, never to cause any future headache.

Here we can quote from that authoritative work of Lee-Warner "Native States of India" wherein the case for the British Government with regard to jurisdiction over Cantonment in State territories has been admirably put forward.

"The British Government has the absolute right of occupying any Military positions it deems fit in any of the protected States. It has received the authority of its allies to protect them and it may, in consequence of this delegation and without further reference to them, establish its Cantonments in their principalities. It is essential to ~~be~~ the efficiency and safety of the army so cantoned that it should be placed exclusively under British jurisdiction. x x x But the invasion of British jurisdiction goes further. The efficiency of the army depends largely on the influence of surrounding circumstances. If intoxicating liquors are offered for sale without restriction by the subjects of the

Native State living in the Cantonment limits, if the soldiers' accoutrements are bought by traders, or if sanitary arrangements are wholly neglected and small-pox and other contagious diseases are left uncared for, the force which occupies a foreign Cantonment would become useless for the duties of general defence. Accordingly, the inability of the British Legislature to pass laws for the subjects of a foreign State is cured by the capacity of the Governor General-in-Council to make regulation and establish Courts in the Cantonment outside British India." Pp. 360-361

From the voluminous correspondence on this subject we noted that in the nineties Baroda Government contends the grounds on which the jurisdiction over the Cantonment ~~and~~ was sought for by the British Government. It was of the opinion that the time had come when the assumption of such an all round jurisdiction over its territory occupied by the Baroda Cantonment was hardly necessary in the circumstances of the case. ~~It~~ It further said that while no objection would be raised to the exercise by the British Government of the Military jurisdiction over the troops stationed in the Cantonment and of the consular jurisdiction of the Residency over its servants and its dependents, yet the other measures which had hitherto been considered necessary for the safety of the army might well be left to be carried out by the Baroda Government itself, who would at all times, it was communicated, be ready to give due attention to the advice of the British Government in such matters.

The Baroda Government also complained of the ^{then} existing arrangements for the control over the Cantonment to which they said, as

is mentioned elsewhere, His Highness' Government had given an unwilling consent. It said when in 1889* the question of Cantonment jurisdiction as a whole was discussed again, the basis of the arrangement to be made in revenue and fiscal matters was indicated by the then Agent to the Governor General at a personal interview with the Minister. His Highness' Government were then given to understand that all revenues arising from stamps, opium, Abkari, and registration would be paid to them after meeting the necessary expenses for their collection and so on. His Highness' Government ceding full criminal and civil jurisdiction on their part. Subsequently, too, His Highness' Government were assured more than once that the orders of the Government of India in revenue matters would soon follow the settlement of Civil and Criminal jurisdiction. Relying on this assurance the Baroda Government ceded both the Civil and Criminal jurisdictions. But after its cession, the Government of India did not give effect to the original understanding in respect of revenue and fiscal matters and the promise held out was not fulfilled and above all Residency ^{declined} ~~declined~~ to discuss the question any more.

Later on, then, Baroda Government appeared to be waiting for the detailed representation of this question ^{for} the opportunity ~~xxx~~ of which, British authorities had given their promise, and ~~shown~~ ~~desire to afford such an opportunity in the future.~~

* H.P.O. Selection XXXII P. 183.